

IN THE UNITED STATES CIRCUIT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

VICTOR TALKING MACHINE COMPANY

AND UNITED STATES GRAMAPHONE

COMPANY, Complainants,

NO. 29,540.

vs.

Aretino Company
~~O'NEILL-JAMES CO.~~, Defendant.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

Arthur J. O'Neill, being first duly sworn,

upon oath says that he is the *president*
Aretino Company
of said defendant, ~~O'NEILL-JAMES CO.~~; that for several years

prior to the institution of this suit said defendant company

had extensively dealt in the talking machines made and manu-

factured by the HAWTHORNE-SHIBLE CO., in the Bill of Complaint

referred to and said to have been made, constructed and operated

in accordance with the invention or improvement covered by

said Berliner patent; that affiant and the other officers

of the defendant company had always understood and had been

advised and believed that the machines manufactured by the

HAWTHORNE-SHEBLE CO. and dealt in by the defendant company

did not constitute an infringement on the rights of the com-

plainants herein as the owner of and licensee under the said

Berliner patent; that by reason of various improvements and

inventions owned and controlled by the said HAWTHORNE-SHEBLE

CO., the improved machine manufactured and sold by them to the

defendant company herein was one which the said HAWTHORNE-

SHEBLE CO. had an entire right to make and sell to said defend-

ant company. Affiant further states that the same opinion has

been very generally entertained in the trade and that the com-

plainants, since the rendition of the opinion of the United

States Supreme Court mentioned in the Bill of Complaint, have

filed in this court ^{separate} several Bills of Complaint against nearly

every dealer in talking machines in the City of Chicago identi-

cal with the Bill of Complaint herein, and have similar suits

pending in other cities, and have in a circular letter recently

issued stated that a very great number of similar suits will

be begun all over the United States.

As to all the talking machines now on hand the affiant

and the other officers of the defendant company understood and believed, by reason of the acts of the complainant VICTOR TALKING MACHINE COMPANY hereinafter set forth, that the defendant had an unquestioned right, and that the VICTOR TALKING MACHINE COMPANY raised no objection whatsoever to the defendant dealing therein, regardless whether the same did or did not ^{constitute} amount to an infringement of the Berliner patent.

Affiant further states that the defendant company had for several years prior to the institution of this suit extensively dealt in the sound records manufactured by said LEEDS & CATLIN, as described in the Bill of Complaint, and therein alleged to constitute an infringement on the rights of the Complainant as sole owner and licensee of said Berliner patent; that affiant and the other officers of the defendant company had always understood and been advised and believed that the sound records manufactured by the said LEEDS & CATLIN and dealt in by the defendant company did not constitute an infringement on the rights of the complainants herein as the holder of and licensee under the said Berliner patent; Affiant further states that the same opinion has been very generally entertained in the trade and that the complainants, since the rendition of the opinion of the United States Supreme Court mentioned in the Bill of

Complaint in this Court ^{separate} several Bills of Complaint against nearly every dealer in sound records or disks in the City of Chicago, identical with the Bill of Complaint herein, and have similar suits pending in other cities, and have in a circular letter recently issued stated that a very great number of similar suits will be begun all over the United States.

As to all the sound records or disks now on hand, the affiant and other officers of the defendant company understood and believed by reason of the acts of the Complainant VICTOR TALKING MACHINE COMPANY hereinafter set forth, that the defendant had an unquestioned right and that the VICTOR TALKING MACHINE COMPANY raised no objection whatsoever to the defendant dealing therein, regardless whether the same did or did not ^{constitute} amount to an infringement of the Berliner patent.

In reliance on such understanding and belief and in reliance on the acts of the Complainant referred to and hereinafter set forth, the defendant purchased and now has on hand a large number of sound records and a large number of talking machines manufactured by said LEEDS & CATLIN and said HAWTHORNE-SHEBLE CO. alleged in the Bill of Complaint to infringe on the Berliner patent and which

save for such acts on the part of the Complainant the defendant
would not have purchased.

Affiant further states that in addition to the sound
records manufactured by LEEDS & CATLIN, the defendant company has
extensively dealt in the disk records manufactured expressly for
it by the COLUMBIA PHONOGRAPH COMPANY, ^{and by} VICTOR TALKING MACHINE COM-
PANY, through its department or subsidiary company known as the
UNIVERSAL TALKING MACHINE MANUFACTURING COMPANY. Which records were
manufactured and constructed to be used ^{and} by reason of certain devices
hereinafter explained ~~and~~ were suitable for use only on the talking
machines manufactured for the defendant by HAWTHORNE-SHREVE CO. as
aforesaid. And affiant further states that it was well known to
the Complainant that said UNIVERSAL TALKING MACHINE MANUFACTURING
COMPANY was manufacturing ^{for the defendant} the sound records in all respects the
same as the records made for the defendant by LEEDS & CATLIN, and
that the records so made by the UNIVERSAL TALKING MACHINE MANUFACTUR-
ING COMPANY were designed to be and were used exclusively in combina-
tion with the talking machines made for the defendant by HAWTHORNE-
SHREVE CO., which Complainants now contend in this proceeding consti-
tute an infringement on the Berliner patent.

Affiant further states that the COLUMBIA PHONOGRAPH COMPANY is a duly organized corporation having its principal office in the ~~State~~^{City} of New York, and is and for some years has been the sole owner and proprietor of a process patent known as the JONES Patent, ^{No 688739} for the manufacture of ~~the~~ disk sound records such as described in the Bill of Complaint herein and covered, when used to reproduce sound, by the Berliner Patent; that the Complainant VICTOR TALKING MACHINE COMPANY in order to secure the privilege or license of manufacturing ~~the~~ disk sound records pursuant to the JONES process patent several years ago entered into a working agreement with the said COLUMBIA PHONOGRAPH COMPANY, the exact terms and conditions of which are to this affiant unknown, but he is informed by various officers and agents of said Columbia PHONOGRAPH COMPANY and said VICTOR TALKING MACHINE COMPANY that by said agreement the VICTOR TALKING MACHINE COMPANY has obtained from the COLUMBIA PHONOGRAPH COMPANY the right to manufacture and sell flat disk sound records pursuant to the said JONES process patent and the COLUMBIA PHONOGRAPH COMPANY has, on the other hand, by said agreement obtained from the Victor Talking Machine Company the right to manufacture and sell talking machines, together with

disk sound records constructed, manufactured and operated under and
pursuant to the said BERLINER patent here in suit. Among the persons
who have so informed affiant are the following, viz: George W. Lyle,
General Manager and Vice-President of the COLUMBIA PHONOGRAPH COMPANY;
Wilson, Assistant to the General Manager of the COLUM-
BIA PHONOGRAPH COMPANY; Walter Eckhardt, formerly General Wholesale
Manager of the COLUMBIA PHONOGRAPH COMPANY and later Special Repre-
sentative of the UNIVERSAL TALKING MACHINE MANUFACTURING COMPANY;
Royal, General Manager of the UNIVERSAL TALKING MACHINE
MANUFACTURING COMPANY; Louis F. Geissler, General Manager of the
VICTOR TALKING MACHINE COMPANY.

Affiant further states that whatever may be the pre-
cise terms of the contract between the said COLUMBIA PHONOGRAPH
COMPANY and the complainant VICTOR TALKING MACHINE COMPANY there
exists some working agreement between them and each is manufactur-
ing and selling talking machines and disk records under and pursu-

ant to both the Berliner Patent in suit and the said Jones Patent, as
*is also the subsidiary company Universal Talking Machine
Manufacturing Company*
Affiant further states that the talking machines

which the defendant company has sold are known to the trade as the
Arfeno
~~Baby Dee and Yankee Prince~~, and are manufactured only for the
defendant and have been sold to the trade exclusively by the defend-

ant. Such machines differ from all other and any other talking machines on the market in this, viz: In all other disk machines the turn table or platform carrying the disk or sound record has in the center a small hole not to exceed an eighth of an inch in diameter which fits on a peg connected with the motor. On the ARETINO turn table and in the center thereof is a disk about two inches in diameter and about three eighths of an inch high. In order that the disk or sound record may lie flat on the turn table, as it must in the operation of the machine, it is necessary that a corresponding circle be cut in the disk. By reason whereof affiant states that the disk or sound records used in connection with the machines manufactured for and sold by the defendant herein are of special construction and design and are in that respect different from any other record on the market, the other records having a hole about one eighth of an inch in diameter; that no other disk or sound record on the market can be used in combination with the talking machine dealt in by the defendant. Any person having the slightest knowledge of talking machine and sound records would at once recognize the records dealt in by the defendant as a special and unusual design and intended to be used in combination with a machine not made by the VICTOR TALKING MACHINE COMPANY or the COLUMBIA PHONOGRAPH

COMPANY , or by any licensee of either of them. A sample or specimen of which turn table accompanies this affidavit as "Exhibit X.X" A sample or specimen of which sound record accompanies this affidavit as "Exhibit Y.Y"

Affiant further states that several years ago the complainant VICTOR TALKING MACHINE COMPANY and its officers caused to be organized a subsidiary corporation to manufacture sound records and talking machines constructed and operated under and pursuant to said Berliner Patent here in suit and to sell the same in apparent competition with the VICTOR TALKING MACHINE COMPANY to the trade which could not be secured by the latter, which said subsidiary company is known as the UNIVERSAL TALKING MACHINE MANUFACTURING COMPANY and the machine produced and sold by it is known as the ZONOPHONE.

Affiant further states that the complainant VICTOR TALKING MACHINE COMPANY intimately controls and directs the business of said subsidiary corporation; that affiant is informed and believes and states the fact to be that Eldredge R. JOHNSON for a number of years prior to 1901 was the sole licensee of the UNITED STATES GRAMAPHONE COMPANY, having the sole right to manufacture talking machines and sound records

pursuant to the said Berliner Patent; that said Johnson was the moving and controlling spirit in the organization of the VICTOR TALKING MACHINE COMPANY and owns or controls a large portion of the capital stock thereof; affiant further states that said Johnson is the President of the said complainant VICTOR TALKING MACHINE COMPANY and is and always has been the active and controlling factor in its affairs and in the management of its business; that said Johnson is and always has been the active and controlling factor in the business and the management of the affairs of said subsidiary corporation, UNIVERSAL TALKING MACHINE MANUFACTURING COMPANY, and has given his personal attention to the details thereof; that the majority of the stock of said subsidiary company is held in the name of said Johnson; and, as this affiant is informed and believes, is held by him for and on behalf of the VICTOR TALKING MACHINE COMPANY; that one _____ Royal holds some important official connection with the UNIVERSAL TALKING MACHINE MANUFACTURING COMPANY and likewise has some important official connection with the complainant VICTOR TALKING MACHINE COMPANY; that the UNIVERSAL TALKING MACHINE MANUFACTURING COMPANY is represented in Chicago by A. D. Geissler, who is the son of said Louis F. Geissler, General Manager of the VICTOR TALKING

MACHINE COMPANY, and also, represents the latter named Company

in Chicago; that various other officers or agents are common

to the VICTOR TALKING MACHINE COMPANY and the UNIVERSAL TALKING

MACHINE MANUFACTURING COMPANY; that it is a very general under-

standing, and so far as the affiant has ever heard a unanimous

understanding in the trade throughout the United States, that

the VICTOR TALKING MACHINE COMPANY and the UNIVERSAL TALKING

MACHINE MANUFACTURING COMPANY are one and the same, controlled

and managed by the same persons, to the same ends, and with the

same policies and for the profit of the stockholders of the

VICTOR TALKING MACHINE COMPANY. *Insert pages 11 1/2 + 11 1/2 A*

The said UNIVERSAL TALKING MACHINE MANUFACTURING COMPANY

manufactures disk records pursuant to the JONES process patent

belonging to the COLUMBIA PHONOGRAPH COMPANY and claims and is

conceded the right to do so by reason of the agreement existing

between the said COLUMBIA PHONOGRAPH COMPANY and the Complainant

VICTOR TALKING MACHINE COMPANY, hereinbefore referred to.

Affiant further states that all matters and affairs of

any importance in connection with the business of said UNIVERSAL

TALKING MACHINE MANUFACTURING COMPANY are referred by its agents

Affiant further states that he has been informed by various persons whose affidavits defendant cannot procure that the VICTOR TALKING MACHINE COMPANY and the UNIVERSAL TALKING MACHINE MANUFACTURING COMPANY are one and the same concern. Fred A. Siemon, manager of the Talking Machine Department of Rudolph Wurlitzer, a very large dealer in such machines, stated to the affiant that he understands that said companies are the same; one Solomon, Department Manager of Rothchilds & Company, has stated the same, as has also his Assistant, one Beach, both of whom stated to affiant that A. D. Geissler, the Chicago agent of the Complainant VICTOR TALKING MACHINE COMPANY had so informed them; the Department Manager of Butler Bros. has also stated, as also the Department Manager of Sears, Roebuck & Company and the Department Manager of Siegel, Cooper & Co. ~~have likewise stated to affiant;~~ also, ^{by} ~~the~~ Department ~~Managers~~ of J. M. Smyth; one Furey, manager of the Chicago branch of the COLUMBIA PHONOGRAPH COMPANY stated to affiant that he had been reliably informed that one Babson who had owned the ZONOPHONE, which is the machine now manufactured by the UNIVERSAL TALKING MACHINE MANUFACTURING COMPANY, sold the same to the VICTOR TALKING MACHINE COMPANY for certain shares of its capital stock and that the VICTOR TALKING MACHINE COMPANY owns and controls said UNIVERSAL TALKING

MACHINE MANUFACTURING COMPANY; LeonOlmstead stated to affiant that said Babson had himself stated the same to him, the said Olmstead.

Affiant further states that on June 18, 1909, he had a conversation with Henry Babson, the former President and controlling stockholder in the *Zonophone Company* ~~UNIVERSAL TALKING MACHINE MANUFACTURING COMPANY~~ and now a director in the VICTOR TALKING MACHINE COMPANY; that said

Babson in such conversation informed this affiant that he, the said

Babson, had sold his stock in ~~the Zonophone Company~~ ~~UNIVERSAL TALKING MACHINE MANUFACTURING COMPANY~~ *the Zonophone Company* ~~INCORPORATED~~ *organized the Universal Talking Machine Mfg Co. &* ~~INCORPORATED~~ to the VICTOR TALKING MACHINE COMPANY, which now owns

and for some time has owned and controlled all the stock of the UNIVERSAL TALKING MACHINE MANUFACTURING COMPANY, and now and for some time has dominated and controlled its affairs and business.

See Page 11

and servants to the said Eldredge R. Johnson, and such affairs are a matter of discussion and determination among and by the officers and servants of said, both of said complainant VICTOR TALKING MACHINE COMPANY. Recently, and after the decision of the Supreme Court of the United States set forth in the Bill of Complaint herein had been rendered, and specifically about June 1, A.D., 1909, affiant in company with

✓ *Sherwin N. Bisbee* of the defendant company, entered into negotiations with the said UNIVERSAL TALKING MACHINE MANUFACTURING COMPANY to procure talking machines and records manufactured by it under and pursuant to said Berliner patent and said Jones patent. Said *Royal*, General Manager of said UNIVERSAL TALKING MACHINE MANUFACTURING COMPANY, appointed as the place for such negotiations the general offices of the complainant VICTOR TALKING MACHINE COMPANY, at Camden, New Jersey, where this affiant together with said *Bisbee*

met said *Royal* and negotiated with him. Said Louis F. Geissler, General Manager of the Complainant VICTOR TALKING MACHINE COMPANY, but who save as an officer of the VICTOR TALKING MACHINE COMPANY has no connection with the UNIVERSAL TALKING MACHINE MANUFACTURING COMPANY, as affiant is informed, took part in said negotiations and advised with the said *Royal*. During said conversations, said

Royal stated to this affiant as to various propositions concerning prices and terms of sale, that he, the said Royal, before he could make any definite agreement or proposition would have to consult with the President of the VICTOR TALKING MACHINE COMPANY, and stated upon several occasions that the said VICTOR TALKING MACHINE COMPANY was interested in whatever would be done by said UNIVERSAL TALKING MACHINE MANUFACTURING COMPANY.

Affiant further states that in April, A.D., 1909, similar negotiations were pending between the defendant company and said UNIVERSAL TALKING MACHINE MANUFACTURING COMPANY, and that at that time in connection with said negotiations and as a part thereof the defendant company received one or more letters from the complainant VICTOR TALKING MACHINE COMPANY. At that time, in order to make to the defendant a proposition as to prices the said UNIVERSAL TALKING MACHINE MANUFACTURING COMPANY requested samples or specimens of the *Aretino* ~~Baby Bee and Yankee Prince~~ machines manufactured for the defendant by the HAWTHORNE-SHEBLE CO., which the defendant agreed to supply and thereafterwards, on April 20, 1909, the complainant herein VICTOR TALKING MACHINE COMPANY sent to the office of the defendant ~~C. W. SHEBLE CO.~~ and procured said machines. These machines the affiant has been informed by letter from the

VICTOR TALKING MACHINE COMPANY were immediately sent by its Chicago representatives to its home office in Camden, New Jersey.

Aetino
Affiant further states that the ~~Busy Bee and Yankee~~

PRINCE machines each bear a stamp or label to the effect that

the same are manufactured by this defendant and the specimens

or samples so delivered to the complainant herein VICTOR TALKING

MACHINE COMPANY as aforesaid were so stamped; that said machines

in various and divers apparent respects were essentially

different from the machines manufactured by the VICTOR TALKING

MACHINE COMPANY, from the machines manufactured by the COLUMBIA

PHONOGRAPH COMPANY, or by any licensee of either of them; that

among such differences are that the motor of the HAWTHORNE-SHEBLE

CO. machine is stamped whereas that of the VICTOR TALKING MACHINE

COMPANY and the COLUMBIA PHONOGRAPH COMPANY are cast iron; the

motor handle of the COLUMBIA and VICTOR MACHINES are screwed on

to the motor, whereas the HAWTHORNE-SHEBLE CO. machine has a

different device; the sound arm and box of the HAWTHORNE-SHEBLE

CO. machine are entirely different in construction and appearance

from the sound arm and box of the VICTOR and COLUMBIA machines;

the HAWTHORNE-SHEBLE CO. machine has a brake or lever for starting and stopping the motor which projects through the cabinet or box containing the same and works up and down, whereas the COLUMBIA PHONOGRAPH COMPANY'S machine has a lever which extends through the cabinet and is pulled in and out to start and stop the motor, and the VICTOR machine is started or stopped by a brake which operates on the turn table and not directly on the motor and is placed on top the box or cabinet; the HAWTHORNE-SHEBLE CO. has the spring device described in the affidavits filed herein by the Complainant in connection with its Bill of Complaint; that any person at all versed in the matter of talking machines would immediately on inspection of the specimens or samples given by the defendant to the VICTOR TALKING MACHINE COMPANY as aforesaid discover and know that the same were not made by the VICTOR TALKING MACHINE COMPANY, or by the COLUMBIA PHONOGRAPH COMPANY, or by any of their licensees, but were made by the HAWTHORNE-SHEBLE CO. Affiant further says that the hereinbefore mentioned Royal and Louis F. Geissler, General Manager of the VICTOR TALKING MACHINE COMPANY, in the negotiations herein mentioned, in speaking of the talking machines handled by the defendant company referred to them as the

HAWTHORNE-SHREVE CO. or the HAWTHORNE machines. And affiant further states that prior to the beginning of the negotiations in the next paragraph herein mentioned, the agents of the VICTOR TALKING MACHINE COMPANY knew and were all acquainted with the machines dealt in by the defendant and discussed the same with affiant,

Affiant further states that in the latter part of the year 1908 the UNIVERSAL TALKING MACHINE MANUFACTURING COMPANY solicited ~~of~~ the defendant herein for a part of its patronage and sought to enter into some arrangement for the manufacture for it

of disk records under the Berliner and Jones patents, to be used in combination with the defendant's ~~Busy Bee and Yankee Prince~~ *Aretino* machines; that in connection with such negotiations the defendant

in November or December, 1908, sent to the said UNIVERSAL TALKING MACHINE MANUFACTURING COMPANY one of the turn tables used in connec-

tion with said ~~Busy Bee and Yankee Prince~~ *Aretino* machines, ~~showing the lug~~ *showing* ~~the elevated disk~~ *the elevated disk* hereinbefore referred to, to enable the said UNIVERSAL TALKING

MACHINE MANUFACTURING COMPANY to construct and make a correspond-
circle
ing slot in the sound records or disks. Said turn table or carriage

sent to the UNIVERSAL TALKING MACHINE MANUFACTURING COMPANY, as aforesaid, a specimen of which accompanies this affidavit as "Exhibit

X X", differed from any turn table made by the VICTOR TALKING MACHINE

COMPANY, the UNIVERSAL TALKING MACHINE MANUFACTURING COMPANY or

the COLUMBIA PHONOGRAPH COMPANY, in several respects in addition

elevated disk before mentioned, which is a patented article, affiant being its patentee
to the ~~one~~ mentioned; that among such differences were that the

Artino
edge of the turn table of the ~~Busy Bee~~ is rough and unfinished,

as is shown by "Exhibit X" accompanying this affidavit, whereas

the edge of the turn table used on the VICTOR and COLUMBIA machines

is turned and smooth, as shown by "Exhibit XI" accompanying this

Artino
affidavit; the turn table of the ~~Busy Bee~~ is attached to the Motor

in an apparent essentially different manner from that used on the

on the latter a center pin or driving shaft extends through the bed of the cabinet and through the turn table, whereas in the Artino is connected with the motor by a shaft attached to the turn table
COLUMBIA and VICTOR MACHINES,

Affiant further states that the negotiations last

mentioned terminated in an agreement between the defendant and said

UNIVERSAL TALKING MACHINE MANUFACTURING COMPANY, whereby the latter

agreed to and since has manufactured sound records or disks equipped

circle
or supplied with the ~~slot~~ to fit over the ~~lug~~ on the turn table and

Artino
used in combination with said ~~Busy Bee~~ and ~~Yankee Prince~~ machines

manufactured by the HAWTHORNE-SHERLE CO. for the said defendant.

Affiant further states that from conversations which

he has had with various officers and agents of the VICTOR TALKING

MACHINE COMPANY and the UNIVERSAL TALKING MACHINE MANUFACTURING

COMPANY he knows that the said VICTOR TALKING MACHINE COMPANY was fully aware and advised and approved and offered no objection to and profited by the manufacture and sale to the defendant of such records as aforesaid.

Affiant further states that from November, 1908, up to and after the institution of this suit the said UNIVERSAL TALKING MACHINE MANUFACTURING COMPANY has been delivering thousands of sound records or disks manufactured as aforesaid to this defendant, many thousands of which are now on hand and which the defendant would not have purchased save for the apparent relations between the UNIVERSAL TALKING MACHINE MANUFACTURING COMPANY and VICTOR TALKING MACHINE COMPANY and the belief induced by such relations and the acts of the VICTOR TALKING MACHINE COMPANY that no objection would be raised by it to the use of such records in combination with the ~~Busy Bee and~~ *Cretino* ~~Yankee Prince Talking Machines.~~

And affiant further states that said records so purchased from the UNIVERSAL TALKING MACHINE MANUFACTURING COMPANY will be a total loss to the defendant if it be enjoined from disposing of the same to be used in connection with the *Cretino* ~~Busy Bee and Yankee Prince~~ machines now on hand.

Affiant further states that prior to the negotiations between the defendant and the UNIVERSAL TALKING MACHINE MANUFACTURING COMPANY beginning in November or December, 1908, as before mentioned, the complainant, VICTOR TALKING MACHINE COMPANY had repeatedly taken up with the defendant the matter of making disk sound records for the defendant to be used in connection with the ~~BUZY BEE~~ *Artino* and ~~YANKEE PRINCE~~ machines. Such negotiations on the part of said complainant were begun soon after the defendant began to sell the *Artino* ~~BUZY BEE~~ and ~~YANKEE PRINCE~~ machines and said complainant then knew that said machines were being made by HAWTHORNE-SHEBLE CO., and at no time did said complainant in any manner object to the defendant selling such machines, or handling the sound records therefor made by LEEDS & CATLIN, but on the contrary, said complainant entered into competition with such other persons for the defendant's trade. And affiant states that the only reason said complainant never furnished either directly or through its said subsidiary concern any records prior to November and December, 1908, was because the prices offered by said complainant to the defendant were not as favorable to the defendant as those offered by other manufacturers.

Affiant further states that in addition to the records made by the UNIVERSAL TALKING MACHINE MANUFACTURING COMPANY the defendant now has on hand a large number of disks or sound records constructed and by far the larger proportion of which have been purchased since as aforesaid and manufactured by the COLUMBIS PHONOGRAPH COMPANY and the LEEDS & CATLIN, the exact number of each of which this affiant does not know but which in the aggregate (including the UNIVERSAL records) ^{costing about \$5000} approximates 25,000, a very large number of which were made by the UNIVERSAL TALKING MACHINE MANUFACTURING COMPANY as aforesaid. All of these records have been purchased since the UNIVERSAL TALKING MACHINE MANUFACTURING COMPANY began to manufacture for the defendant as aforesaid, and are so intermingled and are so nearly identical that it is extremely difficult and in many cases impossible as a practical question to determine which of such records were manufactured by LEEDS & CATLIN, and to determine this question would require a minute and careful examination of each disk or sound record, at the risk of even then being mistaken.

Affiant further states that the defendant also has on hand about ~~one thousand~~ ^{five hundred Artins} ~~and Yankee Prince Talking machines~~ ^{costing about \$3500} manufactured for it by the HAWTHORNE-SHIBLE CO., as aforesaid, all of which have been purchased within the year 1909 and subsequent to

the time the UNIVERSAL TALKING MACHINE MANUFACTURING COMPANY began to manufacture disks or sound records as aforesaid for the defendant, and by far the larger proportion of which have been procured since said UNIVERSAL TALKING MACHINE MANUFACTURING COMPANY began to negotiate for the manufacture of identical machines and since the samples or specimens of said ARETINO machines were delivered by the defendant to the complainant VICTOR TALKING MACHINE COMPANY in April, A.D. 1909.

Affiant further states that the defendant ARETINO COMPANY is perfectly solvent and is and will be entirely able to respond to the complainant to any money decree which may be awarded in its favor by reason of the sale by the defendant of the disk records and talking machines now in the possession of the defendant if the preliminary injunction be denied.

Affiant further states that should the temporary injunction applied for be denied, and should the defendant sell

the records and machines now on hand as aforesaid, the complainant would in affiant's opinion suffer no loss or damage whatever, because under the agreement heretofore referred to between the said Complainant *Artino* VICTOR TALKING MACHINE COMPANY and the COLUMBIA PHONOGRAPH COMPANY the latter has a full and complete right to sell unto the defendant and to the trade in general machines and records made pursuant to the Berliner patent, and has entered into an agreement with the defendant so to do. And affiant says that the Complainants' damages, if any, would not be irreparable, and said Eldredge R. Johnson, President of the VICTOR TALKING MACHINE COMPANY, has said in a very recent circular letter, "I do not know that the Victor Company's interests have ever been irreparably injured by the attempts of piratical concerns to copy our goods." An injunction, even though temporary, against the defendant would simply result in the absolute destruction of the machines and records now on hand and make it necessary for the defendant to replace the same by purchase from the COLUMBIA PHONOGRAPH COMPANY, resulting in a great loss to the defendant without any benefit at all to the Complainants or either of them.

If upon final hearing it shall be decided by this Honorable Court that the VICTOR TALKING MACHINE COMPANY has not by

reason of having through its subsidiary concern as aforesaid manufactured sound records for the defendant, authorized the used of the same in connection with the ~~BUSY BEE and VANDER~~

Arctino

~~PRINCE TALKING MACHINES~~ for which they were expressly manufactured,

and that notwithstanding such acts *by* the said complainant, it is nevertheless entitled to receive from the defendant the profits

realized by the defendant on the sale of such records and machines

now on hand as aforesaid, then affiant states that such profits

may be easily and accurately determined and the defendant company

is as aforesaid entirely solvent and able to pay over to the complainant such profits.

Affiant further states that *the defendant* ²⁵ has some ~~42~~ traveling

salesmen on the road engaged solely in the business of selling

talking machines and sound records; that it will take at least

three months to procure a working number of COLUMBIA ^{*or any other*} machines;

that at this season of the year the demand is for immediate

delivery; that if defendant is restrained from putting out the

(Arctino) machines now on hand, it will be necessary to discharge all its

salesmen and stop doing business; that said employees will obtain

employment elsewhere; that it takes a great deal of time and is

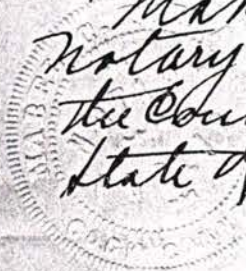
very expensive to get together a number of successful salesmen; that all new men are so to say experiments; that a large portion of those employed prove failures as salesmen; that in such cases the defendant suffers a loss from ~~two to three~~ ^{at least five} hundred dollars on each man who so proves a failure; that the issuance of a preliminary injunction as prayed will dissipate the force of salesmen now employed and wholly destroy the results of the efforts of years and the expense incurred in getting together so large a force of successful salesmen; that a preliminary injunction will practically destroy the large business now possessed by the defendant; that no corresponding benefit will be realized by the complainants. Whereas if the preliminary injunction be denied the defendant will be able to dispose of the machines and to account to the complainants for whatever profits or damages may be decreed to it therefor.

Affiant further states that the defendant now has on hand for immediate shipment orders for approximately ~~two~~ ^{eight} hundred Buoy ~~Bee~~ ^{Uretino} and Yankee Prince machines, which orders have been obtained at great expense and will be wholly lost to the defendant if a temporary injunction be granted.

And affiant further states that said LEEDS & CATLIN have ceased the manufacture of records and said HAWTHORNE-SHEBLE CO. have ceased the manufacture of talking machines, so that the defendant could not, if it so desired, purchase either machines or records made by any person other than the VICTOR TALKING MACHINE COMPANY or the COLUMBIA PHONOGRAPH COMPANY, or some licensee. Wherefore affiant states that the dealings of the defendant from this time on in the HAWTHORNE-SHEBLE CO. machines may be accurately determined and the damages, if any, suffered by the complainants definitely ascertained.

Arthur J. O'Neil

*Subscribed and sworn to
before me this 19th day
of June, 1909
Mabel C. Putnam
Notary Public in and for
the County of Cook and
State of Illinois.*



REPRODUCED AT THE
NATIONAL ARCHIVES
GREAT LAKES REGION

**REPRODUCED AT THE
NATIONAL ARCHIVES
GREAT LAKES REGION**

RG 21, United States Circuit Court, Northern District
of Illinois at Chicago; Civil Case Files, 1871-1911;
Civil Case File 29510, Victor Talking Machine Co.
and U.S. Gramophone Co.
v. s. Arefino Company; Affidavit of Arthur J.
O'Neill, p 1-11, 11 $\frac{1}{2}$, 11 $\frac{1}{2}$ a, 12-24.

IN THE UNITED STATES CIRCUIT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION.

VICTOR TALKING MACHINE COMPANY)
and UNITED STATES GRAMAPHONE)
COMPANY, Complainants,)
vs.)
ARETINO COMPANY. Defendant.)

NO. 29,510.

STATE OF ILLINOIS,)
COUNTY OF COOK.) ss.

WINFRED B. JAMES, being first duly sworn, on oath deposes and says that he is *secretary* of the defendant company, and as such has charge of its books and papers; that following are copies of letters received and written by the defendant company in due course of business, and are the letters which were produced at the argument of the motion for a preliminary injunction, to file copies of which as an amendment to defendant's affidavits leave was then given.

Subscribed and sworn to before me
this 29th day of June, A.D. 1909.

Albert C. James
Notary Public in and for the
County of Cook and State of
Illinois.

My commission expires June 8th, 1910

TELEPHONES: 3508-9-10 NEWARK

CABLE ADDRESS: ZON-O-PHONE NEWARK.

THE

UNIVERSAL TALKING MACHINE

MFG. CO.

ZON-o-phone and Disc

Records

CAMP AND MULBERRY STS.

NEWARK, N. J. May 5th, 1909.

Mr. Arthur H. O'Neill,
O'Neill-James Company,
Chicago, Ills.

Dear Sir:-

Your letter of May 1st was received by Mr. Royal yesterday when he arrived in Newark. We expect to mail you the list of single side records we have in stock either to-night or to-morrow morning. It may be that we have twenty-thousand or thirty thousand more records that are boxed up and we do not know the contents of each case.

Mr. Royal states if you will take all the single side records we have he will let you have them for 16 cents each, providing you furnish the label.

Mr. Royal also states that the cabinet people are working on cabinets so as to get the style and prices and will probably be able to give you some information when he comes over next week on both machine and double side records.

Very respectfully,

UNIVERSAL TALKING MACHINE MFG. CO.

(signed) J. A. MacNabb

J. A. M. -E.

TELEPHONES: 3508-9-10 NEWARK CABLE ADDRESS: ZON-O-PHONE NEWARK

TELEPHONES: 3508-9-10 NEWARK CABLE ADDRESS: ZON-O-PHONE NEWARK

(Cut of copyrighted) THE
Zon-o-phone Trade)
(Mark:) UNIVERSAL TALKING MACHINE
("On Speaking Terms.") MFG. CO.

("On Speaking Terms.")
CAMP AND MULBERRY STS. Records

NEWARK, N. J. May 11th, 1909.

O'Neill-James Company,
39 Fifth Ave., Chicago, Ills.

O'Neill-James Company,

Chicago, Ill.

Gentlemen:-

Your letter of May 7th has been received and as soon as the
order from Mr. Geassler arrives, same will be pushed through the press
plant. We should advise you, however, on receipt of this letter to write
to your printing house in New York, giving them instructions to accept
orders that we might send them for labels, as I am under the impression
that there will be some of the labels that we are entirely out of and
I am not quite sure whether they will accept orders from us or not.

Very respectfully,

UNIVERSAL TALKING MACHINE MFG. CO.

(Signed) J. A. Macnabb

J.A.M.- E

TELEPHONES: 3508-9-10 NEWARK

CABLE ADDRESS: ZON-O-PHONE NEWARK

(Cut of Copyrighted
Zon-o-phone Trade

(Mark:

("On Speaking Terms.")

THE

UNIVERSAL TALKING MACHINE

MFG. CO.

Zon-o-phone and Disc

Records

CAMP AND MULBERRY STS.

NEWARK, N. J. May 20th, 1909.

O'Neill-James Company,

Chicago, Ill.

Gentlemen:

We received your letter of May 17th and we also received a letter from the Art Color Printing Company stating that they had sent a complete list of all the labels they have to Mr. Eckhardt. I wrote Mr. Eckhardt asking him to kindly furnish me with the list which I presume he will do just as soon as he returns to the city. In the mean time we are pressing up records of the labels we have in stock. Shipment will be made to-day of 5 cases of Aretino and 7 cases of Busy -Bee Records.

Very respectfully,

UNIVERSAL TALKING MACHINE MFG. CO.

J. A. MACNABB

J.C.M.-E.

General Manager

Telephones CENTRAL 1335
Automatic 8052

{ Cut of
VICTROLA
Cut of
VICTROLA }

THE TALKING MACHINE CO.
VICTOR
TALKING MACHINES
RECORDS and
SUPPLIES.
72-74 Wabash Avenue.

{ Cut of Victor Talking
Machine Company's
Copyrighted Trade Mark
"His Master's Voice." }

WHOLESALE
ONLY

Chicago, April the twentieth
1909

O'Neil James Co
39 - 5th Ave
Chicago

Gentlemen,-

Please deliver to the bearer three sample premium
machines which you are now using, which the writer
spoke to Mr. O'Neil of yesterday.

We desire to ship them to the factory as samples.

Very truly yours,

THE TALKING MACHINE CO.

(Signed) A. D. Geissler

MANAGER

ADG KAM

Automatic 8052

Cut of
VICTROLA

THE TALKING MACHINE CO.

VICTOR

TALKING MACHINES

RECORDS and

SUPPLIES

32-74 Wabash Avenue

Cut of Victor Talking
Machine Company's
Copyrighted Trade Mark
"His Master's Voice."

WHOLESALE
ONLY

CHICAGO, June the second

1909

O'Neil James Co.

Chicago Illinois

Gentlemen

On April twenty-first we forwarded the three
crates of horns and one box of machines which
you sent us, to A. D. Geissler, c/o Victor
Talking Machine Company, Camden, N.J.

These goods are still in the east and we would
ask you to kindly advise us if you have heard
anything from them relative to same.

Very truly yours,

THE TALKING MACHINE CO.

DAC GME

CREDIT DEPT.

COPY OF LETTER.

February 26th, 1909.

Universal Talking Machine Mfg. Co.,

Newark, N. J.

Gentlemen:-

Your favor of the 24th received. Your Mr. Royal will be able to see Mr. O'Neill and our President Mr. S. N. Bisbee at the Hoffman House, New York City, where they will be probably until Saturday night or Sunday morning, or a letter addressed to Mr. O'Neill, c/o Hawthorne & Sheble Mfg. Co., Philadelphia, Pa., will reach him Monday or Tuesday.

Respectfully,

O'NEILL-JAMES COMPANY.

WBJ-FV.

DISTRIBUTORS
TALKING MACHINES, RECORDS, PREMIUM SPECIALTIES

MANUFACTURERS
PEERLESS SUCTION CLEANERS

WALTER L. ECKHARDT, President

J. CHARLES GROSHUT, Secretary-
Treasurer

MANUFACTURERS OUTLET COMPANY
(INCORPORATED)

BERLIN OFFICES,

CABLE ADDRESS

90 RITTER STR

"MANOCO," NEW YORK

IMPORTERS AND DISTRIBUTORS

89 CHAMBERS STREET

TELEPHONE 3179 WORTH

FACTORY, 71 Reade Street

NEW YORK

June 19th, 1909.

My dear Arthur:-

Your telegram of the 18th, also your letters of the 15th, 16th and 17th duly to hand, and in reply to same would state that I have been preparing to leave here tomorrow or Monday, so as to be on hand in time to offer any assistance in my power in your present difficulty.

I was somewhat relieved, however, when I received your telegram stating it was unnecessary for me to come on, and that you only required an affidavit from me, and as soon as I receive your letter advising me fully as to what you desire, I will go before a notary and make the necessary affidavit.

My suggestion offered in my recent letter that your attorney lay before the Court the fact that the Universal Co. sold you goods, knowing that you were using these other goods, and were willing to meet competition of L. & C. and Hawthorne & Sheble, I think this will have considerable bearing on the case, and help show you were acting in good faith.

Now, if you want to show the connection between the Zen-o-Phone or Universal Co. and the Victor Co., if I were you I would subpoena Eldridge R. Johnson, President of the Victor Co., who, according to my best knowledge and belief, is principal owner of the Universal Co., and all matters of any importance in the Universal Co. are passed upon by him personally, and it was, in fact, with his personal sanction that I originally presented a proposition to you for Universal goods. *When I receive your letter I will endeavor to cover your requirements as far as possible in my affidavit.*

With very kindest personal regards and best wishes to you and yours and your good associates, believe me, as ever,

Faithfully yours,
(signed) W. L. Eckhardt

Mr. Arthur J. O'Neill,
c/o The O'Neill-James Co.,
256 Madison St.,
Chicago, Ill.

WLE/M

TYPEWRITERS :: ELECTRIC MOTORS :: TALKING MACHINES :: HARDWARE SPECIALTIES
HOME MOVING-PICTURE MACHINES :: MUSIC BOXES :: NOVELTIES

WALTER L. ECKHARDT, President

J. B. FURBER, Secretary-Treasurer

MANUFACTURERS OUTLET COMPANY

IMPORTERS AND DISTRIBUTORS

CABLE ADDRESS "MOCO, " NEW YORK

271 BROADWAY

NEW YORK

November 25, 1908.

My dear Athur:-

Referring to your favor of the 23rd inst., beg to advise that you need have no fear of the name Universal Talking Machine Mfg. Company appearing in connection with patent regulation stamp on the back of the record, in fact, it is to be desired that you will refrain from ever intimating that these goods are made by the Universal Talking Machine Mfg. Company, it being the desire of Messrs. Johnson and Royal to keep this fact as much as possible under cover, and knowing their wishes in the matter, I was considerably disturbed when our good friend Loring not only told me that you were buying records from the Victor or Zonophone Company but also told me the price, expressing his surprise that the Victor Company would bid so low for the business, but further told me that you had ordered but 36 numbers which was only done at his suggestion, he being unable to supply you the new numbers for this particular bulletin, all of which I have, of course, taken with a little water and salt, feeling that you were compelled to tell him that you had ordered this bulletin owing to his inability to supply the same. I am very sorry indeed that you gave him the impression that the Victor Co are in way connected with the manufacture of these special records, and as they are coming from the Zonophone or Universal Talking Machine Manufacturing Company, it is not right to have him labor under this impression, and I would appreciate if you would correct it the next time you see him or write him.

WLE/GM

Cordially yours,
(signed) W.L.Eckhardt

Mr. A.J.O'Neill,

President

c/o O'NEILL-James Co., 39 Fifth Avenue, Chicago, Ill.

**REPRODUCED AT THE
NATIONAL ARCHIVES
GREAT LAKES REGION**

RG 21, United States Circuit Court, Northern District
of Illinois at Chicago; Civil Case Files, 1871-1911;
Civil Case File 29510, Victor Talking Machine Co.
and U.S. Gramophone Co. vs. The Arctino Co.;
Amendment to Defendant's Affidavits, pages 1-9.

IN THE CIRCUIT COURT OF THE UNITED STATES.

Northern District of Illinois,

Eastern Division.

In Equity. No. 23,510.

DEC 27 1909

SUIT ON BERLINER GRAMOPHONE PATENT No. 534,543.

Kohlsaat, J.

Victor Talking Machine Company and United States
Gramophone Company,

Complainants,

vs.

The Aretino Company,

Defendant.

FINAL DECREE.

And now, to wit, this 27th day of December, A.D. 1909, a decree for preliminary injunction against the above named defendant, as prayed for in the bill of complaint, having been duly made and entered herein on June 4, 1909, and a preliminary injunction having been duly issued in accordance with the said decree for preliminary injunction and served upon the above named defendant and the said defendant having thereafter taken an appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the said decree granting preliminary injunction, and the said preliminary injunction having been partially superseded and stayed pending the determination of the said appeal by the said Circuit Court of Appeals, and it further appearing that upon motion of counsel for the said, The Aretino Company, the said appeal to the said Circuit

~~Circuit~~ Court of Appeals has been dismissed, and the said parties now having consented to the entry of the following decree without costs to either party as against the other, it is

ORDERED, ADJUDGED AND DECREED and the Court doth hereby Order, Adjudge and Decree as follows, to wit,-

I. That the Letters Patent, No. 534,543, dated February 19, 1895, for Improvements in Gramophone, granted to the United States Gramophone Company as the assignee of Emile Berliner, are good and valid, as to claims 5 and 35 thereof.

II. That the complainants herein, the Victor Talking Machine Company and the United States Gramophone Company, are now, and have been, since October 5, 1901, the sole and exclusive owners of the legal and equitable title in and to the said Letters Patent No. 534,543 in suit.

III. That the defendant, The Aretino Company, has infringed upon said Letters Patent, and particularly claims 5 and 35 thereof, by the use and sale of sound recording and sound reproducing apparatus containing the improvements and invention specified in said claims 5 and 35 of said Letters Patent No. 534,543, which claims read as follows:

"5. The method of reproducing sounds from a record of the same which consists in vibrating a stylus and propelling the same along the record by and in accordance with the said record, substantially as described."

"35. In a sound reproducing apparatus consisting of a traveling tablet having a sound record formed thereon and a reproducing stylus shaped for engagement with said record and free to be vibrated and propelled by the same, substantially as described."

IV. It is further Ordered, Adjudged and Decreed, that a perpetual injunction be issued in this case against the said

defendant, The Aretino Company, ~~restraining~~ and perpetually enjoining it, and each of its associates, attorneys, servants, clerks, agents and workmen, and all persons claiming or holding under it, from manufacturing, using or selling or in any way disposing of sound reproducing apparatus, records, or devices embodying the subject-matter of claim 35, of the patent in suit, and from manufacturing, using or selling or in any way disposing of apparatus, records, or devices which embody the method of claim 5 of said patent, or intended to be operated in accordance with said method claim, and from using or employing in any way said method specified in claim 5 of the patent in suit.

V. It is further Ordered, Adjudged and Decreed ^{by agreement of parties} that the said defendant shall, upon the entry of this decree, deliver over to the complainants' solicitor, William O. Belt, Esq., all the infringing goods consisting of disc talking machines and disc talking machine records, which the said defendant had in stock or which was in the control of the said defendant on November 29, 1909, and that all title to and ownership of the said infringing goods shall thereupon pass to the above named complainants.

VI. It is further ordered that all bonds and each of them, heretofore given in the above entitled suit, by either of the parties to the above entitled suit, as security for damages or costs be, and the same are hereby released, canceled, annulled and made void and of no effect whatsoever, and that all physical exhibits heretofore filed herein may be withdrawn by counsel for the respective parties.

VII. It is further Ordered, Adjudged and Decreed, that the supersedeas and stay granted herein on June 25, 1909, of the preliminary injunction heretofore issued in this suit pursuant to the decree entered herein on June 24, 1909, be and the same hereby is vacated and set aside and the said preliminary injunction be and the same hereby is reinstated with full force and effect.

Entered Dec 27, 1909

W. A. A. A. A. A.

The entry of the foregoing decree is hereby consented to.

Horace Pettit
Of counsel for Complainants.

Frank K. Meyer
Of Counsel for Defendant.

REPRODUCED AT THE
NATIONAL ARCHIVES
GREAT LAKES REGION

RD

**REPRODUCED AT THE
NATIONAL ARCHIVES
GREAT LAKES REGION**

RG 21, United States Circuit Court, Northern District
of Illinois at Chicago; Civil Case Files, 1871-1911;
Civil Case File 24510, Victor Talking Machine Company
and United States Gramophone Company vs.,
The Arctino Company; Final Decree, pages 1-4.